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MENTALLY ILL OFFENDERS AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Nelson T. Abbott
Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill modifies provisions relating to offenders with a mental condition.

Highlighted Provisions:

This bill:

- adds specific disorders to a definition of mental illness;
- provides additional requirements for the provision and use of documents and arrest reports for treatment assessments and hearings relating to mentally ill offenders;
- clarifies scheduling requirements for competency evaluations and treatment assessments;
- clarifies when a third party service provider may be used; and
- makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 76-2-305**, as last amended by Laws of Utah 2023, Chapter 184
- 77-16a-101**, as last amended by Laws of Utah 2023, Chapters 184, 330
- 77-16a-103**, as repealed and reenacted by Laws of Utah 2023, Chapter 184

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-2-305** is amended to read:

76-2-305 . Mental condition -- Use as a defense -- Influence of alcohol or other substance voluntarily consumed.

- 28 (1) As used in this section:
- 29 (a) (i) "Mental condition" means a mental illness or a mental disability that
- 30 substantially impairs an individual's mental, emotional, or behavioral functioning.
- 31 (ii) "Mental condition" does not include a mental abnormality that is manifested
- 32 solely by repeated criminal conduct, anti-social behavior, or a substance use
- 33 disorder.
- 34 (b) "Mental disability" means an intellectual disability or a neurodevelopmental disorder
- 35 as those terms are defined in the current edition of the Diagnostic and Statistical
- 36 Manual of Mental Disorders published by the American Psychiatric Association.
- 37 (c) "Mental illness" means the following mental disorders as described in the most
- 38 recent edition of the Diagnostic and Statistical Manual of Mental Disorders published
- 39 by the American Psychiatric Association:
- 40 (i) schizophrenia spectrum and other psychotic disorders; [or]
- 41 (ii) bipolar I disorder;
- 42 (iii) post-traumatic stress disorder; or
- 43 ~~[(ii)]~~ (iv) other serious mental health conditions with psychotic features.
- 44 (2) (a) It is a defense to a prosecution under any statute or ordinance that the defendant,
- 45 as a result of a mental condition, lacked the mental state required as an element of the
- 46 offense charged.
- 47 (b) A mental condition is not otherwise a defense, but may be evidence in mitigation of
- 48 the penalty in a capital felony under Section 76-3-207 and may be evidence of special
- 49 mitigation reducing the level of a criminal homicide or attempted criminal homicide
- 50 offense under Section 76-5-205.5.
- 51 (3) The defense defined in this section includes the defenses known as "insanity" and
- 52 "diminished mental capacity."
- 53 (4) A person who asserts a defense of insanity or diminished mental capacity, and who is
- 54 under the influence of voluntarily consumed, injected, or ingested alcohol, controlled
- 55 substances, or volatile substances at the time of the alleged offense is not excused from
- 56 criminal responsibility on the basis of a mental condition if the alcohol or substance
- 57 caused, triggered, or substantially contributed to the mental condition.

58 Section 2. Section **77-16a-101** is amended to read:

59 **77-16a-101 . Definitions.**

60 As used in this chapter:

- 61 (1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.

- 62 (2) "Department" means the Department of Health and Human Services.
- 63 (3) "Executive director" means the executive director of the Department of Health and
64 Human Services.
- 65 (4) "Forensic evaluator" means a licensed mental health professional who is:
66 (a) not involved in the defendant's treatment; and
67 (b) trained and qualified to conduct a guilty with a mental condition evaluation.
- 68 (5) "Mental condition" means the same as that term is defined in Section 76-2-305.
- 69 (6) "Mental disability" means the same as that term is defined in Section 76-2-305.
- 70 (7) "Mental health facility" means the Utah State Hospital or other facility that provides
71 mental health services under contract with the division, a local mental health authority,
72 or organization that contracts with a local mental health authority.
- 73 (8) "Mental health supervision" includes regular and periodic activities including:
74 (a) the review of a defendant's assessment, diagnostic formulation, individual service
75 plan development, and progress toward completion of care; ~~and~~
76 (b) identification of barriers to a defendant's care, assistance in removing barriers to a
77 defendant's care, continuation of services to a defendant, authorization of care for a
78 defendant, and the observation of the delivery of clinical care to a defendant ~~[-]~~ ; and
79 (c) the provision of an update report to a court as required under Subsection 77-16a-103
80 (5)(g).
- 81 (9) "Mental illness" means the same as that term is defined in Section 76-2-305.
- 82 (10) "Offender with a mental condition" means an individual who has been adjudicated
83 guilty with a mental condition.
- 84 (11) "Secure setting" means a jail, prison, or locked inpatient medical facility approved by
85 the department.
- 86 (12) "UDC" means the Department of Corrections.
- 87 Section 3. Section **77-16a-103** is amended to read:
88 **77-16a-103 . Plea of guilty with a mental condition -- Procedures -- Sentencing --**
89 **Reduction -- Costs.**
- 90 (1) (a) (i) If a defendant wishes to enter a plea of guilty with a mental condition, the
91 parties may stipulate as to:
92 (A) whether the defendant had a mental condition at the time of the commission of
93 the offense; and
94 (B) whether the defendant could benefit from supervision or treatment.
95 (ii) If the parties stipulate as described in Subsection (1)(a)(i), the court shall enter

96 findings consistent with the parties' stipulation if the stipulation is supported by
97 sufficient evidence.

98 (b) If the parties do not stipulate to Subsection (1)(a)(i), the court shall hold a hearing
99 and determine, by clear and convincing evidence:

100 (i) whether the defendant had a mental condition at the time of the commission of the
101 offense; and

102 (ii) whether the defendant could benefit from supervision or treatment.

103 (c) After reviewing the stipulation described in Subsection (1)(a)(i) or conducting a
104 hearing under Subsection (1)(b):

105 (i) if the court finds that the defendant had a mental condition at the time of the
106 offense, the court shall accept the defendant's plea of guilty with a mental
107 condition; or

108 (ii) if the court finds that the defendant did not have a mental condition at the time of
109 the offense, the court may not accept the defendant's plea of guilty with a mental
110 condition.

111 (2) (a) If a defendant wishes to enter a plea of guilty with a mental condition for a felony
112 offense and the parties do not stipulate to Subsection (1)(a)(i), before holding the
113 hearing described in Subsection (1)(b), the court may order the defendant to submit
114 to an examination, which may be conducted only by a forensic evaluator appointed
115 by the department, to determine:

116 (i) whether the defendant had a mental condition at the time of the commission of the
117 offense;

118 (ii) whether the defendant could benefit from supervision or treatment; or

119 (iii) whether the defendant currently is competent to enter a plea.

120 (b) (i) If a defendant wishes to enter a plea of guilty with a mental condition for a
121 misdemeanor offense and the parties do not stipulate to Subsection (1)(a)(i),
122 before holding the hearing described in Subsection (1)(b), the court may order the
123 defendant to submit to an examination by a forensic evaluator.

124 (ii) [~~Unless otherwise ordered by the court, the~~] The examination[~~-described in~~
125 ~~Subsection (2)(b)(i)] shall determine:~~

126 (A) whether the defendant had a mental condition at the time of the commission of
127 the offense;

128 (B) whether the defendant could benefit from supervision or treatment; or

129 (C) whether the defendant currently is competent to enter a plea.

- 130 (c) Before an examination is conducted pursuant to Subsection (1)(b) or this Subsection
131 (2):
- 132 (i) the petitioner or other party, as directed by the court or requested by the
133 department, shall provide to the forensic evaluation provider nonmedical
134 information and materials relevant to a treatment assessment, including the
135 charging document, arrest or incident reports pertaining to the charged offense,
136 known criminal history information, and known prior mental health evaluations
137 and treatments; and
- 138 (ii) for purposes of a guilty with a mental condition evaluation, a custodian of mental
139 health records pertaining to the defendant, including the defendant's prior mental
140 health evaluations or records relating to the defendant's substance use disorder,
141 may provide the records to:
- 142 (A) with the defendant's consent, a forensic evaluation provider or the department
143 on the department's request; or
- 144 (B) pursuant to an order of the court, a forensic evaluation provider.
- 145 (3) (a) If a defendant relies on a private mental health evaluation in support of the
146 defendant's plea of guilty with a mental condition and the parties do not stipulate to
147 Subsection (1)(a)(i), upon the request of the prosecutor before the hearing described
148 in Subsection (1)(b), the court shall order the defendant to submit to an examination
149 by:
- 150 [(a)] (i) the department if the offense is a felony; or
151 [(b)] (ii) the department or a forensic evaluator if the offense is a misdemeanor.
- 152 (b) The petitioner or other party, as directed by the court or requested by the department,
153 shall provide to the private mental health evaluation provider nonmedical information
154 and materials relevant to a treatment assessment, including the charging document,
155 arrest or incident reports pertaining to the charged offense, known criminal history
156 information, and known prior mental health evaluations and treatments.
- 157 (c) For purposes of a guilty with a mental condition evaluation, a custodian of mental
158 health records pertaining to the defendant, including the defendant's prior mental
159 health evaluations or records relating to the defendant's substance use disorder, may
160 provide the records to:
- 161 (i) with the defendant's consent, a private mental health evaluation provider or the
162 department on the department's request; or
- 163 (ii) pursuant to an order of the court, a private mental health evaluation provider.

- 164 (4) If a court finds that a defendant was guilty with a mental condition at the time of the
165 offense in accordance with Subsection (1)(c)(i) but would not benefit from available
166 supervision or treatment, the court shall hold a sentencing hearing within 45 days of the
167 entry of the defendant's plea of guilty with a mental condition.
- 168 (5) (a) If a court finds that a defendant had a mental condition at the time of the
169 commission of the offense, the defendant could benefit from supervision or
170 treatment, and has entered a plea of guilty with a mental condition in accordance with
171 Subsection (1)(c)(i), the court:
- 172 (i) shall order:
- 173 (A) the department to provide a treatment assessment of the defendant and to
174 submit to the court treatment recommendations for the defendant; or
- 175 (B) the defendant to arrange for a treatment assessment of the defendant with a
176 private provider and for the private provider to submit to the court treatment
177 recommendations for the defendant;
- 178 (ii) shall schedule a treatment review hearing within 30 days after the day on which
179 the court entered the plea of guilty with a mental condition; and
- 180 (iii) may defer sentencing for up to one year in accordance with Subsection (6), if the
181 defendant consents to a deferred sentence.
- 182 (b) The petitioner or other party, as directed by the court or requested by the department,
183 shall provide to the treatment assessment provider nonmedical information and
184 materials relevant to a treatment assessment, including the charging document, arrest
185 or incident reports pertaining to the charged offense, known criminal history
186 information, and known prior mental health evaluations and treatments.
- 187 (c) For purposes of a guilty with a mental condition treatment assessment, a custodian of
188 mental health records pertaining to the defendant, including the defendant's prior
189 mental health evaluations or records relating to the defendant's substance use
190 disorder, may provide the records to:
- 191 (i) with the defendant's consent, a treatment assessment provider or the department on
192 the department's request; or
- 193 (ii) pursuant to an order of the court, a treatment assessment provider.
- 194 [(b)] (d) At the treatment review hearing described in Subsection (5)(a)(ii), the court
195 shall:
- 196 (i) consider all available diagnosis, treatment, and supervision recommendations;
- 197 (ii) if a party does not agree with treatment recommendations issued by the

198 department under Subsection (5)(a)(i)(A), hold a hearing on the issue of the
199 department's recommendations and make appropriate modifications to the
200 recommendations if necessary; and

201 (iii) order the defendant to comply with all treatment and supervision
202 recommendations that~~[-the court finds]~~ are in the best interest of the defendant and
203 public safety.

204 ~~[(e)]~~ (e) (i) In determining treatment and supervision recommendations under
205 Subsection ~~[(5)(b)]~~ (5)(d), the court may order the defendant to be placed in a
206 secure setting as described in Subsections ~~[(5)(e)(ii) and (iii)]~~ (5)(e)(ii) and (iii) if
207 the court finds that the placement would be in the best interest of the defendant, a
208 victim of the defendant, or public safety.

209 (ii) (A) If the offense is a class C misdemeanor, the court may not place the
210 defendant in a secure setting for more than 90 days.

211 (B) If the offense is a class B misdemeanor, the court may not place the defendant
212 in a secure setting for more than six months.

213 (C) If the offense is a class A misdemeanor or a felony, the court may place the
214 defendant in a secure setting for up to one year.

215 (iii) The court shall, before making a determination as to a secure setting placement,
216 notify the executive director of the proposed placement and provide the
217 department with an opportunity to:

218 (A) evaluate the defendant; and

219 (B) make a recommendation regarding placement to the court.

220 ~~[(f)]~~ (f) If the court determines that the defendant is eligible for supervised release as part
221 of the defendant's treatment and supervision recommendations under Subsection [
222 ~~(5)(b)]~~ (5)(d), except as provided in Section 76-3-406, the court may order:

223 (i) if the offense is a felony:

224 (A) supervision by Adult Probation and Parole, or a third party that is approved by
225 Adult Probation and Parole, for a period of up to one year in accordance with
226 the applicable supervision provisions described in Title 64, Chapter 13,
227 Department of Corrections - State Prison; ~~[or]~~ and

228 (B) ~~[supervision including-]~~ mental health supervision by:

229 (I) the department or a local mental health authority; or

230 (II) if the court determines that it is appropriate, a public or private entity that
231 provides mental or behavioral health services and is approved by the

- 232 ~~department or the court~~]; or
- 233 (ii) if the offense is a misdemeanor, [~~supervision including~~] mental health supervision
- 234 by:
- 235 (A) a local mental health authority; or
- 236 (B) if the court determines that it is appropriate, a public or private entity that
- 237 provides mental or behavioral health services and is approved by the
- 238 department[~~or the court~~].
- 239 ~~[(e)]~~ (g) (i) After the initial review hearing described in Subsection (5)(a), the court
- 240 shall hold periodic review hearings approximately every 90 days, the frequency of
- 241 which may be modified by the court.
- 242 (ii) At a review hearing described in Subsection [~~(5)(e)(i)]~~ (5)(g)(i):
- 243 (A) the department or the department's designee shall report on the progress of the
- 244 defendant, provide recommendations for the defendant's future care, treatment,
- 245 and secure or unsecure placement, and advise the court on the medical
- 246 necessity of treatments for the defendant;
- 247 (B) the court shall review the status of the defendant and determine whether any
- 248 changes are needed to the defendant's supervision or treatment plan; and
- 249 (C) a party may request, if the party has a good faith basis, that the court review or
- 250 change the defendant's placement within a secure or non-secure setting.
- 251 ~~[(f)]~~ (h) If a defendant is willfully non-compliant with the treatment or supervision
- 252 ordered by the court under this Subsection (5), the court shall hold an order to show
- 253 cause hearing to determine whether the court should:
- 254 (i) proceed with sentencing under Subsection (6);
- 255 (ii) change the defendant's placement to a secure setting;
- 256 (iii) impose another sanction; or
- 257 (iv) take no action.
- 258 (6) (a) The court shall defer sentencing for a defendant who has pleaded guilty with a
- 259 mental condition as described in Subsection (5) until:
- 260 (i) the court determines, after an order to show cause hearing or a review hearing as
- 261 described in Subsection (5), that:
- 262 (A) the defendant is willfully non-compliant with treatment or supervision and is
- 263 unlikely to become compliant with further ordered treatment or supervision; or
- 264 (B) the defendant has reached the maximum benefit of treatment and supervision;
- 265 or

- 266 (ii) one year has elapsed after the day on which the court entered the defendant's plea
267 of guilty with a mental condition.
- 268 (b) At the sentencing hearing, the court shall:
- 269 (i) consider all treatment and supervision that has occurred before the sentencing
270 hearing in the defendant's case;
- 271 (ii) credit any time the defendant has spent in a mental health facility or other
272 residential treatment facility or a secure facility against the defendant's sentence;
- 273 (iii) consider victim input;
- 274 (iv) consider the best interests of the defendant, including which sentence will help
275 prevent the defendant:
- 276 (A) from losing the defendant's ability to control the defendant's state of mental
277 health; and
- 278 (B) from committing additional criminal conduct related to the defendant's mental
279 condition;
- 280 (v) consider the best interest of public safety; and
- 281 (vi) consider any other relevant factor or circumstance.
- 282 (7) (a) Except as provided in Subsection [~~(7)(e)~~] (7)(b), after a defendant who has been
283 sentenced under Subsection (6) has completed the defendant's sentence and any
284 probation or parole:
- 285 [~~(a)~~] (i) notwithstanding the contrary provisions in Subsection 76-3-402(4) or
286 76-3-406(1), the court has jurisdiction to enter a judgment of conviction and shall
287 reduce the judgment of conviction for the offense by two degrees from the
288 original offense; and
- 289 [~~(b)~~] (ii) notwithstanding the contrary provisions in Subsection 76-3-402(4) or
290 76-3-406(1), if the prosecuting attorney specifically agrees in writing or on the
291 court record at any time, the court has jurisdiction to consider and enter a
292 judgment of conviction and may enter a judgment of conviction for the offense
293 that is reduced by up to three degrees from the original offense.
- 294 [~~(e)~~] (b) If a defendant's probation is revoked and any suspended sentence is imposed, the
295 defendant may not receive a reduction under this Subsection (7).
- 296 (8) (a) (i) Except as provided in Subsection (8)(a)(iv), when the offense is a state
297 offense, expenses of examination, observation, and treatment for the defendant
298 shall be paid by the department when not paid for by the defendant's insurance.
- 299 (ii) Travel expenses shall be paid by the county where prosecution is commenced.

- 300 (iii) Expenses of examination for a defendant charged with a violation of a municipal
301 or county ordinance shall be paid by the municipality or county that commenced
302 the prosecution.
- 303 (iv) The department is not responsible for payment for an evaluation described in
304 Subsection [~~(3)(b)~~] (3)(a)(ii) that is conducted by a forensic evaluator who is
305 privately retained by a party.
- 306 (b) (i) Provisions in this part for the support at public expense of a defendant with a
307 mental condition do not release an insurer of a defendant with a mental condition
308 from liability for the care or treatment of the defendant with a mental condition.
- 309 (ii) The department is authorized to collect amounts spent on a defendant with a
310 mental condition from an insurer of the defendant with a mental condition.
- 311 (iii) A health insurance company may not deny coverage for court-ordered treatment
312 or supervision of a defendant with a mental condition solely based on the fact that
313 the treatment or supervision is ordered by a court if the treatment or supervision is
314 medically necessary and would otherwise be a covered benefit under the
315 defendant's insurance plan.
- 316 (9) A guilty with a mental condition evaluation conducted under this section is also subject
317 to the procedural requirements of Subsections 77-15-5(8) through (11) and 77-15-6(4)(a).
- 318 **Section 4. Effective date.**
- 319 This bill takes effect on May 1, 2024.